

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.173, 455B.105(11) and 455B.299, the Environmental Protection Commission hereby proposes to amend Chapter 90, “Scope of Title—Definitions—Forms,” Chapter 91, “Criteria for Rating and Ranking Projects for the Water Pollution Control State Revolving Fund,” Chapter 92, “Clean Water State Revolving Fund,” and Chapter 93, “Nonpoint Source Pollution Control Set-Aside Programs,” Iowa Administrative Code.

The purpose of the proposed amendments is to update the rules for the Clean Water State Revolving Fund to reflect new definitions and current program practices, and to better define project eligibility and prioritization. The most extensive changes are to the Livestock Water Quality Facilities program. The goal of the proposed amendments is to ensure that loan funds are targeted to water quality improvement.

The proposed changes in Chapters 90 through 93 include the following:

Chapter 90

1. Update definitions of eligible projects to reflect new EPA Clean Watersheds Needs categories.
2. Add a definition of “sponsored projects” pursuant to Senate File 339, legislation passed in 2009 Iowa Acts that changed municipal finance law.
3. Remove financial terms. Financial functions are the responsibility of the Iowa Finance Authority.
4. Add a definition of “new AFO” for purposes of loan eligibility.

Chapter 91

1. Integrate point source and nonpoint source prioritization. Prioritization will be based on classification and designated use of receiving waters, relative impact of various project types, and project purpose.
2. Remove project readiness criteria that are covered by bypass procedures in Chapter 92 and compliance status criteria.
3. Allow nonpoint source projects to be funded on a first-come, first-funded concept until 90 percent of the set-aside is allocated.

Chapter 92

1. Clarify public notice procedures.
2. Remove disbursement schedules and the possibility of environmental impact statements from Intended Use Plan (IUP) components.
3. Remove financial analysis from criteria for fundable list. This is the Iowa Finance Authority’s responsibility and is done through the loan application, not the IUP application.
4. Remove restrictions on funding to projects that previously received construction grants.
5. Reference the Clean Water Act to clarify eligibility of land purchase.
6. Make language on sponsored projects consistent with 2009 Iowa Acts, Senate File 339.
7. Include all assurances stated in the EPA Operating Agreement as required by the Clean Water Act.
8. Delete specific procedures for minority business enterprise (MBE)/women’s business enterprise (WBE) and substitute a reference to new EPA disadvantaged business enterprise (DBE) rules.

Chapter 93

1. Onsite Wastewater Systems
 - Change onsite fund to set-aside. The state fund originally established is no longer used.
 - Remove financial underwriting criteria and other financial procedures. These are now covered in the Iowa Finance Authority’s 265—Chapter 26 and in participation agreements with lenders.

2. Livestock Water Quality Facilities
 - Change pass-through loan to linked deposit.
 - Delete location preference.
 - Give DNR the authority to deny applications based on enforcement actions.
 - Limit funding to avoid subsidization of expansions.
 - Refine list of eligible practices.
 - Make certain equipment attachments eligible only when an open feedlot is replaced with a dry bedded confinement building and the equipment is integral to the new manure management system.
 - Change application procedure. Applications will be submitted to the Soil and Water Conservation Districts rather than to the Department.
 - Adopt Natural Resource Conservation Service technical standards where appropriate.
 - Allow DNR or its agent to place restrictive covenant on land where open lot pens were shut down.
 - Remove financial information.
3. Local Water Protection
 - Delete location preference.
 - Adopt Natural Resource Conservation Service technical standards.
 - Limit overbuilding of practices.
4. General Nonpoint Source (GNS)
 - Allow participation agreement as well as linked deposit.
 - Define eligibility according to EPA Clean Watershed Needs categories.
 - Change application procedure for GNS projects. Storm water and green infrastructure project applications will be submitted to the Soil and Water Conservation Districts and other GNS project applications will be submitted to the Department.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4 p.m., Central standard time, on December 15, 2009. Such written materials should be directed to Patti Cale-Finnegan, Water Quality Bureau, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611; fax (515)725-0348; or E-mail patti.cale-finnegan@dnr.iowa.gov.

The Water Quality Bureau encourages you, when submitting comments, to utilize the following guidelines. These guidelines aid in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual or on behalf of a municipality, business, or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

Also, public hearings will be held on:

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|---------------------|------------|---|
| • December 8, 2009 | 10:30 a.m. | Marengo Public Library
235 East Hilton Street
Marengo, Iowa |
| • December 9, 2009 | 1 p.m. | Storm Lake Public Library
609 Cayuga Street
Storm Lake, Iowa |
| • December 10, 2009 | 10 a.m. | DNR Water Supply Office
401 SW 7th Street, Suite M
Des Moines, Iowa |

At the hearings, persons may present their views either orally or in writing. Persons attending a hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

These amendments are intended to implement Iowa Code sections 17A.3(1)“b,” 455B.105 and 455B.291 to 455B.298 and 2009 Iowa Acts, Senate Files 339 and 432.

The following amendments are proposed.

ITEM 1. Amend the parenthetical implementation statutes for rules **567—90.1(455B,17A)** to **567—90.3(455B,17A)** as follows:
(455B,17A)

ITEM 2. Rescind the definitions of “Equity fund,” “Lending institution” and “Loan agreement” in rule **567—90.2(455B)**.

ITEM 3. Amend rule **567—90.2(455B)**, definitions of “Eligible project,” “Needs category” and “Project completion,” as follows:

“*Eligible project*” means, in the context of the water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in Section 212 of the Clean Water Act, or the implementation and development of management programs established under Sections 319 and 320 of the Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those Sections. Only projects classified under one of the following needs categories are eligible for loan assistance: I, II, ~~III~~ III–A, ~~III–B~~, IV–A, IV–B, V, VI, and all subcategories of VII, X and XII. Projects for the primary purpose of speculative growth are considered ineligible.

“*Needs category*” means identified categories of needs which comprise mutually exclusive classes of facilities:

1. Category I—~~Secondary~~ Standard secondary wastewater treatment. This category includes wastewater treatment ~~needs~~ costs necessary to meet the minimum level of treatment ~~required~~ defined by the federal Clean Water Act.

2. Category II—~~More stringent~~ Advanced wastewater treatment. This category includes the wastewater treatment ~~needs~~ costs necessary ~~when more stringent wastewater treatment than secondary (Category I) is required to protect the receiving waters to attain a level of treatment that is more stringent than standard secondary treatment or to produce a significant reduction in nonconventional or toxic pollutants present in the wastewater treated by a facility.~~

3. Category ~~III–A~~ III–A. Infiltration/inflow correction. This category includes ~~rehabilitation of existing sanitary sewers to preclude the entrance of storm water inflow or groundwater infiltration into the sewer~~ costs for correction of sewer system infiltration/inflow problems. Rehabilitation can include sewer or manhole repairs by sealing, lining or replacement and physical removal of inflow sources. Infiltration/inflow correction removes flow from the sewer system by elimination and thereby reduces volumes of wastewater to be treated. Infiltration includes controlling the penetration of water into a sanitary or combined sewer system from the ground through defective pipes or manholes. Inflow includes controlling the penetration of water into the system from drains, storm sewers, and other improper entries. This category also includes costs for preliminary sewer system analysis and detailed sewer system evaluation surveys.

4. Category ~~III–B~~ III–B. Major sewer Sewer system replacement/rehabilitation. This category includes ~~sewer replacement and major rehabilitation of collection or transmission sewers where necessary to the total integrity and performance of the wastewater conveyance and treatment facilities~~ costs for the reinforcement or reconstruction of structurally deteriorating sanitary or combined sewers. The corrective actions must be necessary to maintain the structural integrity of the system.

~~Rehabilitation is considered to be extensive repair of existing sewers (collector and interceptor) beyond the scope of normal maintenance programs, when sewers are collapsing or structurally unsound. Category IIIb does not have infiltration and inflow removal as its basic justification. “Replacement” is defined as the construction of parallel sewer or sewers which perform the function of existing sewers where existing sewers are to be abandoned. “Major rehabilitation” is defined as extensive repair of existing sewers beyond the scope of normal maintenance programs and necessary to maintain structural integrity. Sewer work associated with infiltration/inflow elimination is considered a Category IIIa III-A need. Relief sewers do not fall within this category since they are newly constructed sewers with a function beyond that of existing sewers.~~

5. ~~Category IVa—IV-A. New collectors collector sewers and appurtenances. This category includes sewers which will serve to collect wastewater in existing communities costs of new pipes used to collect and carry wastewater from a sanitary or industrial wastewater source to an interceptor sewer that will convey the wastewater to a treatment facility. The collection system is considered as those public sewers which have a principal purpose of providing service for individual users in existing residential and commercially developed areas to enable collection of wastewater in a centralized system. Pumping stations and force mains and other related appurtenant structures are considered part of the collection system if their primary mechanical function relates to the collection system.~~

6. ~~Category IVb—IV-B. New interceptors interceptor sewers and appurtenances. This category includes sewers which have a principal purpose of transporting wastewater from a collection system to a wastewater treatment site costs for constructing new interceptor sewers and pumping stations to convey wastewater from collection sewer systems to a treatment facility or to another interceptor sewer. Relief sewers are included in this category where additional sewer capacity is required to accommodate all wastewater in a separate sewer system to ensure that it is transported to a wastewater treatment plant for adequate treatment, and to prevent public health hazards within the service area. Relief sewers may include parallel sewers. Pumping stations and force mains and other related appurtenant structures are considered in this category if their primary mechanical function relates to the interceptor’s principal purpose. Equalization basins are included in this category.~~

7. ~~Category V—; Correction of combined sewer overflows. This category includes any construction to control the discharge of pollutants from combined storm and sanitary overflows and bypasses, including sewer separation or rehabilitation, detention basins, lagoons or other facilities to control or treat such discharges costs to prevent or control the periodic discharges of mixed storm water and untreated wastewater (combined sewer overflows) that occur when the capacity of a sewer system is exceeded during a wet weather event. This category does not include costs for overflow control allocated to flood control, drainage improvement, or the treatment or control of storm water in separate storm systems.~~

8. ~~Category VI—; Storm water management program. This category includes municipal storm water management programs required pursuant to NPDES permits for discharges from municipal separate storm sewers systems. These management programs include programs or source control measures, or both, structural and nonstructural costs to plan and implement structural and nonstructural measures to control the runoff of water resulting from precipitation (storm water) with the purpose of improving and protecting water quality. This category includes controlling storm water pollution from diffuse sources by reducing pollutants from runoff from commercial and residential areas that are served by the storm sewer, detecting and removing illicit discharges and improper disposal into storm sewers, monitoring pollutants in runoff from industrial facilities that flow into municipal separate storm sewer systems, and reducing pollutants in construction site runoff discharged to municipal separate storm sewers.~~

9. ~~Category VI-A. Storm water conveyance infrastructure. This category includes costs to address the storm water management program activities associated with the planning, design, and construction of conveying storm water via pipes, inlets, roadside ditches, and other similar mechanisms. These costs will be eligible if they are combined with practices described in Category VI-B or VI-C in order to achieve water quality protection or improvement.~~

10. Category VI-B. Storm water treatment systems. This category includes costs to address the storm water management program activities associated with the planning, design, and construction of treating storm water with wet ponds, dry ponds, manufactured devices, and other similar means. These costs will be eligible if these activities are implemented in order to achieve water quality protection or improvement.

11. Category VI-C. Green infrastructure. This category includes costs to address the storm water management program activities associated with the planning, design, and construction of low impact development and green infrastructure, such as bioretention, constructed wetlands, permeable pavement, rain gardens, green roofs, cisterns, rain barrels, vegetated swales, and restoration of riparian buffers and flood plains. Projects in this category can be both publicly owned and privately owned.

12. Category VI-D. General storm water management. This category includes costs to address the storm water management program activities associated with implementing a storm water management program, such as Geographic Information Systems and tracking systems, equipment such as street sweepers and vacuum trucks, storm water education program startup costs, and storm water management plan development.

~~9.~~ 13. Category VIIa—VII-A. Nonpoint source (NPS) control: Agricultural cropland sources agriculture (cropland). This category includes ~~nonpoint source~~ costs to address NPS pollution control needs ~~caused by~~ associated with agricultural activities related to croplands such as plowing, pesticide spraying, irrigation, fertilizing, planting, and harvesting.

~~10.~~ 14. Category VIIb—VII-B. Animal sources NPS control: agriculture (animals). This category includes ~~nonpoint source~~ costs that address NPS pollution control needs ~~caused by~~ associated with agricultural activities related to animal production, such as confined animal facilities, open feedlots, and grazing.

~~11.~~ 15. Category VIIc—VII-C. Silviculture NPS control: silviculture. This category includes ~~nonpoint source~~ costs that address NPS pollution control needs ~~caused by~~ associated with forestry activities such as removal of streamside vegetation, road construction and use, timber harvesting, and mechanical preparation for the planting of trees.

~~12.~~ Category VIId—Urban sources. This category includes nonpoint source needs associated with new or existing development in urban or rural settings, such as erosion, sedimentation, and discharge of pollutants (e.g., inadequately treated wastewater, oil, grease, road salts, and toxic chemicals) into water resources from construction sites, roads, bridges, parking lots, and buildings.

~~13.~~ 16. Category VIIe—VII-E. Groundwater NPS control: groundwater protection (unknown sources source). This category includes the needs costs that address groundwater protection ~~nonpoint source~~ NPS pollution control needs such as wellhead and recharge protection activities.

~~14.~~ 17. Category VIIf—VII-F. Marinas NPS control: marinas. This category includes costs that address NPS pollution control needs associated with boating and marinas, such as poorly flushed waterways, boat maintenance activities, discharge of sewage from boats, and the physical alteration of shoreline, wetlands, and aquatic habitat during the construction and operation of marinas.

~~15.~~ 18. Category VIIg—VII-G. Resource NPS control: resource extraction. This category includes costs that address NPS pollution control needs associated with ~~nonpoint source~~ activities from mining and quarrying activities.

~~16.~~ 19. Category VIIh—VII-H. Brownfields NPS control: brownfields. This category includes costs that address NPS pollution control needs that address ~~nonpoint source~~ problems associated with real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant abandoned industrial sites which might have residual contamination (brownfields).

~~17.~~ 20. Category VIIi—VII-I. Storage NPS control: storage tanks. This category includes the needs costs that address ~~nonpoint source~~ problems caused by NPS pollution control needs associated with tanks designed to hold gasoline, or other petroleum products, or chemicals. The tanks may be located above or below ground level.

~~18. 21. Category VIIj—VII-J. Landfills NPS control: landfills. This category includes the needs to address nonpoint source problems caused by costs that address NPS pollution control needs associated with sanitary landfills.~~

~~19. 22. Category VIIIk—VII-K. Hydromodification NPS control: hydromodification. This category includes the needs costs to address nonpoint source problems associated with the degradation of water resources as a result of altering the hydrological characteristics of noncoastal waters, including channelization and channel modification, dam, and streambank and shoreline erosion. Work involving wetland or riparian area protection or restoration is included in this category.~~

~~23. Category X. Recycled water distribution. This category includes costs associated with conveyance of treated wastewater that is being reused (recycled water), including associated rehabilitation/replacement needs.~~

~~20. 24. Category VIII—XII. Individual/decentralized Decentralized sewage treatment. This category includes needs costs associated with the rehabilitation or replacement of individual or community sewage disposal systems and onsite wastewater treatment systems or clustered (community) systems. This category also includes the treatment portion of other decentralized sewage disposal technologies.~~

~~21. Category VIII—Concentrated animal feeding operations (CAFO). This category includes the needs for a combination of unit processes or best management practices designed to address water quality or public health problems caused by agricultural activities related to animal production that are subject to the federal concentrated animal feeding operation regulations.~~

~~22. Category IX—Point source mining. This category addresses the needs for a combination of unit processes or best management practices designed to address water quality or public health problems caused by point source mining and quarrying activities.~~

~~“Project completion” means the date operations of the project are initiated or are capable of being initiated, whichever is earlier means the date the final loan certificate is signed by the recipient.~~

ITEM 4. Adopt the following new definitions of “New AFO,” “NPS,” “POTW” and “Sponsored project” in rule **567—90.2(455B)**:

“New AFO” means an animal feeding operation that meets at least one of the following criteria:

1. It was constructed after January 1, 2006.
2. Animal production at the site was resumed after being discontinued for at least 12 months.
3. Production facilities were altered in order to house a different animal species than was produced previously.

“NPS” means nonpoint source pollution which does not have a single point of origin and/or is not introduced into a receiving stream from a specific outlet. NPS pollution sources are diffuse and may be a result of runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrological modification.

“POTW” means publicly owned treatment works as defined in Section 212 of the Clean Water Act.

“Sponsored project” means a water resource restoration project pursuant to 2009 Iowa Acts, Senate File 339, section 7.

ITEM 5. Amend rule 567—90.3(455B) as follows:

567—90.3(455B) Forms. The following forms are used to apply for assistance and to provide required documentation. All forms may be obtained from ~~Environmental Services Division State Revolving Fund,~~ Department of Natural Resources, ~~Henry A. Wallace Building, 502 E. Grand~~ 401 SW 7th Street, Suite M, Des Moines, Iowa 50319 50309. Forms may also be downloaded from www.iowasrf.com. Recipients of assistance shall also comply with applicable requirements of the department’s rules.

~~**90.3(1) Point source POTW water pollution control project forms.**~~

~~a. Application package - Form 542-1320.~~

~~b. Reserved.~~

~~**90.3(2) Livestock water quality facilities forms.**~~

~~a. Application form for loan assistance - Form 542-8159.~~

~~b. Reserved.~~

~~90.3(3) Local water protection project forms. Rescinded IAB 3/15/06, effective 4/19/06.~~

~~90.3(4) 90.3(2) General nonpoint source project forms.~~

~~a. and b. No change.~~

~~90.3(5) 90.3(3) Onsite wastewater treatment assistance forms.~~

~~a. and b. No change.~~

ITEM 6. Amend **567—Chapter 90**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 455B.291 to 455B.298 and 2009 Iowa Acts, Senate File 339.

ITEM 7. Amend rule 567—91.2(455B) as follows:

567—91.2(455B) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As part of that general responsibility, the department and the Iowa finance authority are jointly designated to conduct the administration of the CWSRF loan assistance program to assist in the financing of infrastructure projects pursuant to the Clean Water Act. A project must comply with this chapter and 567—Chapter 92 or 567—Chapter 93 to be eligible for a CWSRF loan. This chapter provides the rating criteria to be used to rank eligible projects for funding. Rating criteria are provided for point source projects publicly owned treatment works (POTW) projects and nonpoint source projects. ~~The nonpoint source projects are divided into three activities:~~

- ~~1. Livestock water quality facilities;~~
- ~~2. Local water protection projects; and~~
- ~~3. General nonpoint source projects.~~

~~Rating criteria for onsite wastewater systems are not included at this time because nonpoint source projects will be utilized when 90 percent of the set-aside funds have been allocated. Until that time, the loan assistance is based on a first-come, first-funded concept.~~

ITEM 8. Amend rule 567—91.3(455B) as follows:

~~**567—91.3(455B) Purpose of water pollution control state revolving fund.** The WPCSRF provides financial assistance to eligible water pollution control works for the design and construction of facilities to protect and improve the state's water quality. The fund reserves a percentage of money each year for administrative purposes. The Iowa department of natural resources (department) administers the program, along with the Iowa finance authority (authority). The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E. The department establishes priorities for the use of the WPCSRF and publishes them each year in its intended use plan (IUP). The Clean Water Act requires that all uses of CWSRF funds are prioritized.~~

~~The financial assistance is described in more detail in 567—Chapter 92. This chapter identifies the criteria that are used to rate projects and activities; for both point source POTW and nonpoint source projects and activities sources. This chapter describes how the criteria will be used to calculate a total score for ranking projects. The commission is to set funding targets for point source POTW and nonpoint source activities and to adjust the fundable project list to ensure that the short- and long-term goals of the intended use plan (IUP) are achieved. The public has an opportunity annually, and quarterly as needed, to comment on both the fundable list and the short- and long-term goals of the intended use plan IUP.~~

ITEM 9. Amend subrule 91.8(1) as follows:

~~**91.8(1) Point source rating Rating criteria.** The point source rating criteria consider the use classification of the receiving waters, water quality of the receiving waters, compliance status of the discharger, groundwater protection, project benefits type, project purpose, readiness to proceed and a tiebreaker. Priority ranking for the projects shall be based on the total points awarded for all the categories; the greater the total number of points, the higher the ranking. The For POTW projects, the ranking will be done annually at the time the IUP is prepared and will not be updated during the year. For nonpoint source projects, if 90 percent of the set-aside is allocated, the ranking will be done at the time the project application is received. The tiebreaker category will be used when necessary.~~

a. *Use classification of receiving waters.* This category addresses the receiving water that is impacted or potentially impacted by the existing situation and that would be improved or protected by the proposed project. Points shall be awarded and shall be cumulative for all designated use classifications of the receiving stream. Points for sludge stabilization, sewers and lift station projects normally will be based on the assigned use of the waters that receive or could receive the effluent discharge.

Use and Classification	Points
Outstanding national resource <u>Iowa</u> waters	50 <u>45</u>
High quality waters	40
High quality resource waters	20
Class A1 waters	50
Class A2 waters	45
Class A3 waters	45
Class C waters	40
Class B (CW1) waters	50
Class B (CW2) waters	30
Class B (WW1) & HH waters	30
Class B (WW2) waters	<u>25</u>
Class B (WW3) waters	<u>20</u>
Class B (LW) waters	35
Class B (LR) waters	25

b. *Water quality of receiving waters.* This category addresses the quality of water in the receiving stream and whether or not the water has been designated as impaired for some uses. Bodies of water that are impaired by pollutants are identified as the Section 303(d) list of waters in the integrated report of impaired waters status. The Section 303(d) list of waters also identifies probable pollutant source categories for these impairments. Projects that primarily impact these waters are awarded points if the water body that receives or could receive the wastewater discharge is included on the Section 303(d) list and the probable pollutant source is a point source. Waters are also identified in the Section 305(b) report on their use attainment status. Projects that primarily impact these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the wastewater discharge. If no use impairment is identified indicating the water was not assessed, the partially supporting status points will be awarded. Points will be awarded for both sections A and B of the table below and then totaled for this category.

Indication of water quality	Points
A	
Section 303(d) listed water <u>Integrated Report of impaired waters status</u>	
High rating for total maximum daily load (TMDL) development <u>4a, 4b, 4c, 4d, or 5a</u>	45 <u>15</u>
Medium rating for TMDL development <u>5b</u>	35 <u>10</u>
Low rating for TMDL development <u>5p</u>	25 <u>5</u>
B	
Section 305(b) status	
<u>Aquatics or fish consumption or drinking water</u>	
Fully supporting	10 <u>5</u>

Indication of water quality	Points
Fully supporting/threatened	15
Partially supporting	<u>20</u> <u>10</u>
Not supporting	<u>30</u> <u>15</u>
Not assessed	<u>20</u> <u>7</u>
<u>Recreation</u>	
<u>Fully supporting</u>	<u>5</u>
<u>Partially supporting</u>	<u>10</u>
<u>Not supporting</u>	<u>15</u>
<u>Not assessed</u>	<u>7</u>

e. Compliance status. This category addresses the compliance status of the proposed project. To provide an incentive for municipal facilities to maintain compliance, more points are given to projects that are in compliance with their NPDES discharge permit when they apply for a loan. Projects that are not in compliance at the time of application, have bypasses, have received administrative orders from the department or have been referred for legal action are given fewer points than a project in compliance. Unsewered community projects will be considered to be in compliance if they are taking action to eliminate public health problems or water quality problems, or both, prior to formal action by the department.

Compliance Status	Points
Has been referred to Iowa attorney general for discharge violation	30
Received administrative order from DNR for discharge violations	25
Compliance schedule in NPDES permit—existing discharge requirements are not being met	20
Compliance schedule in NPDES permit—new discharge requirements are being imposed	40
Bypassing has been reported in previous 12 months	15
Discharge has met all NPDES permit requirements for 24 months (at time of application)	50
Unsewered community and has initiated project on its own	50
Unsewered community and has received an administrative order from DNR	25

c. Protection of groundwater resources. This category considers the use of the aquifer affected by the project.

Groundwater Category	Points
Wellhead protection area for public water supply	<u>40</u>
Unconfined aquifer that serves as a drinking water source	<u>20</u>
Other groundwater protection	<u>10</u>

d. Project benefit type. This In this category, incorporates several factors including points are provided based on the type of project and the relative level of the impact on public health and the environment. Points will be awarded only for the primary benefit project type.

Project Benefits Type	Points
Protection of public health; corrective measures for problems that pose a clear and direct impact on human health. Examples are sewer backups into basements and sewer overflows impacting populated areas.	40
Protection of the environment; corrective measures for problems that pose a clear and direct impact on water quality and the environment. Examples are effluent violations and combined sewer overflows.	30
Prevention of the development of problems that will have an impact on public health and the environment. Examples are upgrading a treatment facility for anticipated growth and replacement of a lift station beyond design life.	20
Category I. Secondary wastewater treatment	40
Category II. Advanced wastewater treatment	50
Category III–A. Infiltration/inflow correction	30
Category III–B. Sewer replacement/rehabilitation	30
Category IV–A. New collector sewers and appurtenances	10
Category IV–B. New interceptor sewers and appurtenances	20
Category V. Combined sewer overflow correction	40
Category VI. Storm water conveyance treatment systems and green infrastructure	30
Category VII–A. Agriculture (cropland)	30
Category VII–B. Agriculture (animals)	50
Category VII–C. Silviculture	10
Category VII–E. Groundwater protection (unknown sources)	20
Category VII–F. Marinas	10
Category VII–G. Resource extraction	10
Category VII–H. Brownfields	30
Category VII–I. Storage tanks	20
Category VII–J. Landfills	30
Category VII–K. Hydromodification	40
Category X. Recycled water distribution	10
Category XII. Decentralized sewage treatment	40
Refinance of existing projects that meet CWSRF eligibility criteria	5

e. Readiness to proceed. This category addresses overall readiness to proceed with project construction. Points can be received for reaching multiple milestones.

Project Status	Points
The project is following the permit application process outlined in department guidance.	20
The applicant has prepared the environmental information document including clearances from other agencies and has submitted the materials to the department.	10
The department and the applicant have agreed on the project schedule and design loading criteria.	10

e. Project purpose. In this category, points are awarded based on the purpose and expected outcome of the project. Points will be awarded only for the primary purpose.

<u>Project Purpose</u>	<u>Points</u>
<u>Allows facility to meet new water quality standards</u>	<u>50</u>
<u>Reduces the loading of a parameter that has been identified as an impairment to the receiving water or watershed as identified through the total maximum daily load (TMDL) process</u>	<u>40</u>
<u>Provides regional consolidation in wastewater treatment or system management</u>	<u>30</u>
<u>Brings facility into compliance with a National Pollution Discharge Elimination System (NPDES) permit or other administrative or judicial enforcement action as may be required by the department or U.S. Environmental Protection Agency (EPA)</u>	<u>25</u>
<u>Eliminates or remediates a source of groundwater pollution</u>	<u>20</u>
<u>Meets existing or reasonable future needs of the community in order to maintain compliance with an NPDES permit</u>	<u>15</u>
<u>Provides operational reliability improvements, apart from projects which address compliance and enforcement</u>	<u>10</u>

f. *Total points.* Total points are calculated using the following formula:
 Total Points = Use Classification + Water Quality (A) + ~~Water Quality (B)~~ + ~~Compliance Status or Groundwater Protection~~ + Project Benefit Type + Readiness Project Purpose

g. *Tiebreaker.* Two or more projects may receive the same total points on the fundable list. If sufficient state revolving loan funds are not available to fund the projects, ties will be broken by determining which project has the highest score in each category in the following order:

- | | |
|--|---------|
| • Water Quality Use Classification of Receiving Streams (A) | Highest |
| • Water Quality of Receiving Streams (B) (a+b) | ↕ |
| • Use and Classification Groundwater Protection | |
| • Project Benefits Type | ↕ |
| • Compliance Status Project Purpose | |
| • Readiness to Proceed | Lowest |

ITEM 10. Rescind rule 567—91.9(455B) and adopt the following **new** rule in lieu thereof:

567—91.9(455B) Nontraditional projects. Nontraditional projects are those in which the primary purpose of the project is other than to improve or protect water quality. Applications may be submitted for nontraditional projects. The applications will be scored using the rating criteria. The traditional projects will be given first priority. If sufficient funds remain in the general nonpoint source set-aside, the nontraditional projects will be listed on the fundable list in priority order after all of the fundable traditional projects are listed.

ITEM 11. Rescind and reserve rules **567—91.10(455B)** and **567—91.11(455B)**.

ITEM 12. Amend subrule 92.4(1) as follows:

92.4(1) Administration. The department, in conjunction with the authority, has been delegated the responsibility of administering the CWSRF program and the DWSRF program described in 567—Chapter 44. The director will may coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

The department may enter into agreements with other private, public or quasi-public agencies to assist with the implementation of the CWSRF program.

ITEM 13. Amend subrule 92.4(7) as follows:

92.4(7) Federal funding coordination. Projects may use CWSRF funds to complete the financing projects partially funded by other federal programs such as Environmental Quality Incentives Program

and Community Development Block Grants. ~~Projects that have received a federal construction grant under provisions of the Clean Water Act are not eligible to receive a loan for the nonfederal share of the project.~~

ITEM 14. Amend paragraphs **92.6(1)“b”** and **“c”** as follows:

b. Notification. A public hearing process is part of the IUP adoption process to provide opportunity for public participation. Notice is published in a newspaper of general circulation prior to the public hearing, ~~and an announcement is released to television and radio stations.~~ A general notice is also made to all applicants and interested agencies and organizations. The notice explains the purpose of the IUP and how additional information may be obtained. All materials relating to the IUP will be posted at www.iowasrf.com.

c. Comments. Comments regarding the proposed IUP will be accepted during the notice period, at the public hearing and in writing for five business days following the public hearing. After evaluation of all pertinent comments, the IUP will be revised, if necessary, and recommended for approval by the environmental protection commission. Subsequent approval by the EPC will establish the IUP to be used for loan assistance.

ITEM 15. Amend subrule 92.6(2) as follows:

92.6(2) Contents. The IUP will identify the anticipated uses of loan funds available for that fiscal year and will include the following:

a. State project priority list. The state project priority list contains the projects and set-asides eligible for CWSRF loans. The state project priority list will include, for ~~point source~~ POTW projects, the name of the eligible applicant, any applicable NPDES permit number and the projected amount of loan assistance. For nonpoint source set-asides, the IUP will include the name of the program and amount set aside.

b. Fundable list. The fundable list includes projects scheduled for loans from funds available during the fiscal year. Projects will be considered in priority order for placement on the fundable list. Subsequent segments of a project which has been awarded financial assistance for Category I and Category II needs will be placed on the fundable list ahead of other new projects whose schedules also would allow funding during the fiscal year. The fundable lists of ~~point source~~ POTW projects and nonpoint source set-asides shall be listed in priority order and shall include ~~a schedule of estimated disbursement of funds, preliminary identification of point source projects that may undergo an environmental impact statement,~~ and the need category(ies) of the projects. The department will consider the following in developing the list of fundable projects for the intended use plan:

- (1) How the project conforms to the short- and long-term goals of the CWSRF;
- (2) The priority rating of the ~~point source~~ POTW project;
- (3) Whether a ~~point source~~ POTW project will be ready to proceed on a schedule consistent with time requirements for outlay of funds;
- (4) Whether the proposed project addresses the need upon which the eligible entity's priority is based;
- ~~(5) The eligible entity's financial capability to service the loan, to provide operation and maintenance, to provide replacement reserves, and, if required, to provide debt service reserves;~~
- ~~(6) The eligible entity's statement of willingness to accept all loan terms and conditions;~~
- ~~(7) (5) The funds available, department priorities and the administrative capacity of the department; and~~
- ~~(8) (6) The applicant's conformance to process guidelines provided by the department.~~

c. Contingency list. A contingency list will be included so that ~~point source~~ POTW projects on the contingency list could become fundable should a fundable project not proceed in a timely manner.

d. and e. No change.

f. Assurances. The IUP will include assurances and specific proposals on how the state intends to meet requirements of the ~~following sections of the Clean Water Act:~~ Operating Agreement between the state of Iowa and the U.S. EPA.

- ~~(1) 602(a) Environmental reviews;~~

~~(2) 602(b)(3) The state will agree to enter binding commitments equal to at least 120 percent of each quarterly federal capitalization grant payment within one year after receipt; and~~

~~(3) 602(b)(4) Certify that all funds in the CWSRF will be expended in an expeditious and timely manner.~~

g. to i. No change.

ITEM 16. Amend subrule 92.6(6) as follows:

~~**92.6(6) Special considerations.** Exemptions to the point source rating criteria may be considered by the department, and funding variances may be granted by the commission for projects that have unique or unusual circumstances but that do not logically fit into the criteria. The commission may grant interest rate reductions or other favorable loan incentives to applicants that sponsor a project that improves impaired waters or restores the physical, chemical or biological integrity of receiving waters impacted by the wastewater treatment facility the quality of the water in the watershed where a city water or wastewater facility is located. Exemptions to the nonpoint source rating criteria may be considered by the department, and funding variances may be granted by the commission for projects that have unique or unusual circumstances which may not logically fit the criteria and are consistent with the short- or long-term goals of the IUP. Examples of projects that may qualify for exemptions and variances are projects targeted to improve impaired waters or projects where the purchase of land or conservation easements by conservation agencies is targeted to improve impaired waters.~~

ITEM 17. Amend subrule 92.7(1) as follows:

~~**92.7(1) Application forms.** An applicant may request an application package from the department. The applicant shall complete the application for placement on the IUP and shall provide documentation on the project. Forms may be obtained from the Environmental Services Division State Revolving Fund, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034 401 SW 7th Street, Suite M, Des Moines, Iowa 50309. Forms may also be downloaded from www.iowasrf.com.~~

ITEM 18. Amend paragraph **92.7(2)“a”** as follows:

~~a. Two Three copies of the facility plan. The facility plan shall be certified by a professional engineer licensed to practice in Iowa and shall be in conformance with Chapter 11 of the Iowa Wastewater Facilities Design Standards (567—paragraph 64.2(9) “b”);~~

ITEM 19. Amend subrule 92.7(6) as follows:

~~**92.7(6) Allowable and unallowable costs.** Allowable costs shall be limited to those eligible costs deemed necessary, reasonable, and directly related to the efficient completion of the project. Unallowable costs include, but are not limited to, the following:~~

~~a. Cost of the nonfederal share of any project funded by an EPA grant under the provisions of the Clean Water Act;~~

~~b. a. Cost of service lines and in-house plumbing;~~

~~c. b. Administrative costs of the recipient;~~

~~d. c. Purchase of vehicles and tools;~~

~~e. d. Land purchase and easement or rights-of-way costs, except as authorized under the Clean Water Act;~~

~~f. e. Pretreatment program development costs unless required by federal regulations; and~~

~~g. f. Operation and maintenance costs.~~

ITEM 20. Amend paragraph **92.8(1)“b”** as follows:

~~b. *Environmental review.* Loan recipients shall conduct environmental review of projects using procedures in 40 CFR Part 6, July 1, 2002, as a part of facility planning. The applicant should work with the department as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from 40 CFR Part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required. In conjunction with the facility planning process as described in 40 CFR 35.2030(c), July 1, 2002, a potential applicant may request formal determination under 40 CFR Part 6. All of 40 CFR Part 6, July 1, 2002, pertaining to Procedures for Implementing~~

the Requirements of the Council on Environmental Quality of the National Environmental Policy Act, is hereby adopted by reference and incorporated herein. However, all references to the U.S. Environmental Protection Agency as performing acts or reviews shall be substituted with references to the department for the purposes of this chapter.

ITEM 21. Amend paragraph **92.8(2)“b”** as follows:

~~b. *Minority business enterprise/women’s business enterprise (MBE/WBE) Disadvantaged business enterprise (DBE).* The recipient must comply with requirements of MBE/WBE DBE participation as found in 40 CFR 31.36(e), July 1, 2002 40 CFR Parts 30, 31, 33, 35 and 40, March 26, 2008. The director will negotiate with the EPA regional administrator to determine the overall “fair share” objective for CWSRF loan-assisted projects. The recipient shall take the following affirmative steps to ensure that small, minority, and women’s business enterprises are utilized where possible as sources of supplies, construction, and services:~~

- ~~(1) Placing qualified small, minority, and women’s business enterprises on solicitation lists;~~
- ~~(2) Ensuring that small, minority, and women’s business enterprises are solicited whenever they are potential sources;~~
- ~~(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of small, minority, and women’s business enterprises;~~
- ~~(4) Establishing delivery schedules, where requirements of the work allow, which encourage participation by small, minority, and women’s business enterprises;~~
- ~~(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and~~
- ~~(6) Requiring prime contractors to take the affirmative steps listed above when awarding subcontracts.~~

ITEM 22. Amend subrule 93.3(1) as follows:

93.3(1) *Onsite wastewater treatment and disposal systems fund set-aside.* The purpose of this fund ~~set-aside~~ is to assist rural homeowners to rehabilitate or improve existing onsite wastewater treatment and disposal systems.

ITEM 23. Amend rule 567—93.4(455B,466) as follows:

567—93.4(455B,466) Onsite wastewater system assistance program.

~~93.4(1) *Onsite wastewater assistance fund.* The onsite wastewater assistance fund (OSWAF) is a separate fund within the state treasury. The OSWAF is a revolving loan fund used to provide low-interest loans to homeowners for improving and rehabilitating onsite wastewater treatment systems and consists of two accounts: a financing account and an administration account. Funds deposited in the OSWAF consist of state appropriated funds, annual capitalization grants provided under Title VI of the federal Clean Water Act, equity fund moneys, loan repayments, interest accrued on funds, and all other moneys specifically designated for use in the OSWAF. The amount to be set aside for the OSWAF is identified in the annual intended use plan.~~

~~93.4(2) *93.4(1) Eligibility and restrictions for participation in the onsite wastewater treatment system assistance program Onsite wastewater system assistance program.* Assistance under the onsite wastewater treatment system assistance program shall be in the form of low-interest loans made by participating lending institutions through a linked deposit arrangement with the CWSRF. The following eligibility conditions and restrictions apply to such assistance.~~

~~a. and b. No change.~~

~~c. *Eligible project costs.* The amount of assistance available shall be limited to the total costs deemed necessary, reasonable, and directly related to the repair, rehabilitation, or replacement of an onsite treatment system needed to meet state or local standards for onsite systems. Eligible costs include all costs directly related to the design, permitting and construction of an onsite wastewater treatment system. Eligible costs include the removal of existing structures, such as septic tanks, earth moving or any land purchases directly related to proper wastewater treatment. Eligible costs do not include additional earthwork, reseeding, replanting, or any other aesthetic improvements. Maintenance~~

or monitoring costs are not considered eligible costs. Eligible costs must be incurred within one year of the issuance of the onsite construction permit by the county.

d. Applicant eligibility. Assistance is limited to applicants who meet the applicable provisions of 567—Chapter 69 and all other local provisions for the siting and construction of onsite wastewater treatment and disposal systems and who demonstrate to the satisfaction of the participating lending institution that the applicants can repay the loan.

e. No change.

f. Property eligibility. As a qualification of eligibility for the loan program, the department may set a limit on the assessed valuation of the dwelling or building served by the onsite wastewater system needing renovation.

93.4(3) Participating lending institutions. Any lending institution as defined in rule 90.2(455B) is eligible to participate in the program by signing an agreement with the department or its financial agent. The agreement will contain the responsibilities of the department to the participating lending institution and vice versa as well as relevant loan conditions and restrictions. The department will provide the format of the agreement. The department or its financial agent will maintain for public record a list of participating lending institutions.

a. Responsibilities of the department to participating lending institutions. For participating lending institutions, the department or its financial agent will:

(1) Provide materials such as pamphlets, brochures, loan application forms and other relevant materials necessary to inform applicants about the program and to assist lenders in completing the loan process.

(2) Ensure the timely transfer of funds in accordance with the terms and conditions set forth in the agreement between the department and the lending institution.

b. Responsibilities of participating lending institutions to the department or its financial agent. The responsibilities of participating lending institutions include:

(1) Making a determination of whether a loan can be secured.

(2) Rendering a judgment on the applicant's ability to repay the loan.

(3) Approving or denying the loan application. The lending institution may approve a loan agreement when it is determined that the application complies with the requirements of this chapter. The loan agreement between the applicant and the lending institution shall be a binding obligation under Iowa law and shall include loan terms and conditions for the loan period. The state and the department are not liable to an eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible borrower.

(4) Notifying the department or its financial agent of a loan to reserve funds for the onsite system improvements funded by the loan.

(5) Notifying the department or its financial agent when the onsite system improvements funded by the loan are completed and inspected. The department or its financial agent will then make a linked deposit equal to the amount of the loan in the form of a certificate of deposit to the lending institution. The lending institution will then service the loan with the linked deposit.

(6) Notifying the department, after a reasonable attempt has been made to collect delinquent payments, when a loan has been in default for 90 days.

93.4(4) Onsite wastewater assistance fund financial agent. To assist the department in administering the onsite wastewater treatment system assistance program, the department may appoint a financial agent responsible for managing the funds in the OSWAF. The responsibilities of the financial agent shall be provided in an agreement between the department and the agent. The responsibilities of the financial agent may include:

a. Developing a management plan for the OSWAF. The management plan shall determine how the fund will be managed to provide the lowest interest loans while maintaining financial security and ensuring the perpetuity of the fund. Included in the management plan shall be the methods and terms for transfer of funds from the OSWAF to participating lending institutions and repayment of funds thereto.

b. Reserving loan funds equal to the amount of the loan as each loan is approved by participating lending institutions.

- ~~e. Distributing funds to lending institutions as stipulated in agreements with lending institutions.~~
- ~~d. Acting as liaison between the department and the lending institutions.~~
- ~~e. Maintaining for public record a list of participating lending institutions.~~
- ~~f. Reporting financial information pertaining to the OSWAF.~~

~~93.4(5)~~ **93.4(2)** *Applying for assistance.* Prior to applying for a loan from a participating lending institution, an eligible individual or entity must receive approval of the proposed improvements from the county in which the onsite wastewater treatment system is located. Application for project approval shall be made on forms provided by the department or its agent. Forms may also be downloaded from www.iowasrf.com.

~~a. County requirements for individual applicants. Applicants requesting county County approval forms shall submit forms provided by the county which include:~~

~~(1) to (3) No change.~~

~~b. County requirements for cluster system applicants. Applicants seeking financial assistance County applications for cluster systems using onsite technology must include with their application to the county:~~

~~(1) to (4) No change.~~

~~c. County review. The county shall review applications to determine if the proposed work meets the applicable provisions of 567 Chapter 69 and all other relevant local provisions for the siting and construction of onsite wastewater treatment and distribution systems. For proposed projects that meet relevant criteria, the county shall issue a permit or certificate. The county permit or certificate shall be accompanied by a cost estimate and proposed construction schedule. A county may deny an application for reasons of noncompliance with applicable state and local criteria. Written notification of the denial shall be provided to the applicant and shall state the reason(s) that the application was denied.~~

~~d. Lender requirements for applicants. The applicant for a loan shall submit to a participating lending institution an application form as prescribed by the department of natural resources or deemed acceptable by the department's financial agent. Also, the applicant shall include a copy of the county permit or certificate approving the proposed project. The applicant is obligated to provide any other specific information the lender may deem necessary.~~

~~e. Loan application processing and disbursement of funds. The process for awarding and managing loans shall be in full accordance with the terms established by the department or its financial agent(s) and the provisions of this chapter.~~

~~(1) Loan approval or disapproval. Upon receipt of a completed loan application form with relevant information as described in 93.4(5) "d," the participating lending institution shall either approve or deny the loan within ten working days. The lending institution shall notify the applicant of loan conditions and limitations at the time of initial application. Before acting on the loan application, the lending institution shall ensure that adequate OSWAF funds are available. If the loan is approved, the lending institution shall notify the loan applicant in writing that the loan has been approved and notify the department's financial agent within two working days of approval of the loan application in order to reserve funds in that amount to ensure that adequate funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant in writing, clearly stating the reasons for denial. Reasons for denial may include that funds are not available or that the applicant presents an unacceptable level of loan risk.~~

~~(2) Disbursement of funds. Upon completion of the onsite wastewater treatment system improvements, the loan applicant shall furnish the lender with copies of all bills relating to the costs of the improvements which were preapproved on the loan application as specified in 93.4(2) "c," and certification from the county that the improvements were accomplished in accordance with the approved plans and meet relevant state and local requirements for onsite wastewater treatment systems. The loan shall be subject to the conditions and limitations provided in 93.4(5) "f." If actual costs are less than the amount requested on the loan application, then the actual loan amount will equal those costs. The lending institution is authorized to execute a loan for a principal of up to 10 percent above the amount of the loan application if costs exceed the application amount. In this case, the loan applicant shall provide the lending institution with a written explanation for any cost overruns.~~

f. — Loan conditions and limitations.

(1) ~~Loan amount and period.~~ The minimum loan granted under this program shall be \$2,000. The loan period shall not exceed ten years. Loans shall be made contingent on the availability of funds from the OSWAF.

(2) ~~Number of loans.~~ There will be no limit to the number of loans an applicant may receive. Each approved application will be handled as a new loan.

(3) ~~Loan execution.~~ The loan agreements to be executed by the applicant and the lending institution shall be a binding obligation under Iowa law, include conditions and terms to be effective for the loan period, and be accompanied by evidence of satisfactory security, legality, and enforceability.

(4) ~~Eligible costs.~~ All costs directly related to the design, permitting, construction, and financing of the onsite wastewater treatment system are eligible for loans. Eligible costs include the removal of existing structures, such as abandoned septic tanks, earth moving or any land purchases directly related to proper wastewater treatment. Eligible costs do not include additional earthwork, reseeding, replanting, or any other aesthetic improvements. Maintenance or monitoring costs will not be allowed as part of the loan. Eligible costs must be incurred within one year of the issuance of the septic construction permit.

(5) ~~Recipient record keeping.~~ The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

(6) ~~Site access.~~ The loan recipient shall agree to provide the department and the administrative authority access to the construction site to verify that the loan was used for the purpose intended and that the constructed works meet applicable state and local environmental requirements and ordinances for onsite wastewater treatment systems. The loan recipient also shall agree to provide access to the onsite system for periodic monitoring by the department and administrative authority, at times mutually agreed upon with the system owner, for the duration of the loan.

(7) ~~Loan termination.~~ The department or its financial agent(s) shall have the right to terminate any loan when terms of the agreement have been violated.

(8) ~~Repayment.~~ Loans shall be repaid in accordance with the terms and conditions of the executed loan agreement. Repayment of the loan must begin no later than 30 days after the date specified in the selected repayment schedule.

(9) ~~Interest.~~ The loan interest rate shall not exceed 3 percent per year. The actual interest rate charged shall be in accordance with the participating lending institution's agreement with the department or its financial agent.

(10) ~~Prepayment.~~ Prepayment of the principal in whole or in part shall be allowed without penalty.

(11) ~~Property transfer.~~ In the event of a property transfer from the original landowner who secured the loan to another person or entity during the repayment period specified in the loan agreement, the balance of the loan shall be due in full.

(12) ~~Loan delinquency.~~ Failure of the loan recipient to repay the loan in accordance with the schedule contained in the loan agreement will result in the loan's being declared in default. For a loan delinquent more than 90 days, the interest rate shall accelerate immediately to the current legal usury limit, shall be applied to the entire unpaid principal, and shall be prorated for the period for which the installment is delinquent.

93.4(3) County review and approval. The county shall review applications to determine if the proposed work meets the applicable provisions of 567—Chapter 69 and all other relevant local provisions for the siting and construction of onsite wastewater treatment and distribution systems. For proposed projects that meet relevant criteria, the county shall issue a permit or certificate. The county permit or certificate shall be accompanied by a cost estimate and proposed construction schedule. A county may deny an application for reasons of noncompliance with applicable state and local criteria. Written notification of the denial shall be provided to the applicant and shall state the reason(s) that the application was denied.

93.4(4) Eligible costs. All costs directly related to the design, permitting, construction, and financing of the onsite wastewater treatment system are eligible for loans. Eligible costs include the removal of existing structures, such as abandoned septic tanks, earth moving or any land purchases directly related to proper wastewater treatment.

93.4(5) Ineligible costs. Costs for additional earthwork, reseeding, replanting, or any other aesthetic improvements are not eligible. Maintenance or monitoring costs will not be allowed as part of the loan.

93.4(6) Rectification. Failure of an onsite wastewater treatment system to conform to approved plans and specifications or failure of a loan recipient to comply with the requirements of 567—Chapter 69 constitutes grounds for the administrative authority to withhold authorization of loan disbursements to the loan recipient. The loan recipient is responsible for ensuring that the identified problem is rectified. Once the deficiency is corrected, the loan funds can be released.

93.4(6) Recipient record keeping. The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

~~93.4(7) Disputes with the administrative authority.~~ A person or entity that disagrees with the withholding of loan funds may request a formal review of the action. The person or entity must submit a request for review in writing to the director within 30 days of the date of notification action.

93.4(7) Site access. The loan recipient shall agree to provide the department and the administrative authority access to the construction site to verify that the loan was used for the purpose intended and that the constructed works meet applicable state and local environmental requirements and ordinances for onsite wastewater treatment systems. The loan recipient also shall agree to provide access to the onsite system for periodic monitoring by the department and administrative authority, at times mutually agreed upon with the system owner, for the duration of the loan.

93.4(8) and 93.4(9) No change.

ITEM 24. Amend rule 567—93.5(455B) as follows:

567—93.5(455B) Livestock water quality facilities requirements.

~~93.5(1) Livestock water quality facilities assistance.~~ Assistance ~~under the CWSRF~~ shall be in the form of low-interest loans made by participating lending institutions ~~or in other manners as specified in an agreement with a pass-through loan recipient through a linked deposit arrangement with the CWSRF.~~ The following eligibility conditions and restrictions for participation apply to such assistance.

~~a.—Location preferences.~~ Livestock water quality facilities located in watersheds with Section 303(d) waters or waters determined to be impaired in the Section 305(b) report will be given a higher priority for funding. See 567—91.9(455B).

b. a. Eligible project costs. All costs directly related to the design, permitting, construction, and financing of the water pollution control facilities are eligible. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities required to provide water pollution control as required by the department or to prevent, minimize or eliminate water pollution.

e. b. Applicant eligibility. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations that are under 1,000 animal unit capacity as defined in Iowa Code section 459.102, and that are not required to have an NPDES permit.

~~NOTE: Current federal laws and rules as of February 2007 do not allow assistance for concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit or assistance for animal feeding operations that will become concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit as a result of the project.~~

Loans will be made only to livestock producers that are operators of record and or have legal control of the property containing the animal feeding operation for the duration of the loan. The department has the discretion to deny applications for producers if the department has issued an administrative order to

the producer pursuant to Iowa Code section 455B.175, if the department notifies the producer in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.175, or if the attorney general has commenced legal proceedings against the producer pursuant to Iowa Code section 455B.112.

d. c. *Project eligibility Eligible projects.* The water pollution control facilities considered eligible for assistance include: lagoons; waste treatment facilities and equipment, including but not limited to land on which waste facilities will be constructed; waste storage or holding structures; composting facilities and equipment; pipes, pumps, and agitation equipment used to move and manage manure; fencing around lagoons and other waste storage structures; water systems used to flush water in waste treatment systems; irrigation systems used for applying liquid wastes to the land; tank wagons, manure spreaders, tractor blades used for scraping waste and other waste collection and processing equipment (including tank trucks, loaders, skid loaders, and waste irrigation equipment); portions of feeding floors and loafing areas used for waste collection and storage; vegetative filters, filter strips, water and sediment control basins, contour buffer strips and diversions used to reduce pollution potential from livestock facilities or land disposal areas; fencing and cross fencing along with any associated watering facilities used as part of managed grazing systems; and other similar structures, equipment or water pollution abatement activities as may be found in manure management plans that fit the requirements of 567—65.17(459), in nutrient management plans, or in comprehensive nutrient management plans as defined by the USDA Natural Resources Conservation Service, provided that portions of the foregoing (except water systems used for flush water in waste treatment systems and composters) located within a poultry house, milk parlor or hog confinement facility (such as a slatted floor) shall be excluded. Assistance for development of manure management plans, nutrient management plans, and comprehensive nutrient management plans is eligible. Assistance may be available for the above-mentioned practices when a replacement animal feeding operation will eliminate an existing animal feeding operation in order to prevent a potential water quality impairment, mitigate a documented impairment, or eliminate a potential or documented pollutant source from a watershed. Assistance may be available for confinement feeding operation structures, including roofed manure storage facilities, in which manure is stored exclusively in a dry form if: manure storage structures, solids settling basins, composting facilities and equipment, lagoons (including fencing), portions of feeding floors or loafing areas used for waste collection, water and sediment control basins, vegetative filters or buffers, surface water diversion structures, agitation or transfer pumps, dry bedded confinement feeding operation buildings or structures pursuant to 2009 Iowa Acts, Senate File 432, when all or part of an open feedlot is replaced, and other practices shown to improve or protect water quality. Replacement animal feeding operations may be eligible where an existing animal feeding operation is eliminated to prevent a water quality impairment or mitigate a documented impairment. Engineering or technical service fees associated with the aforementioned practices are also eligible. A one-time purchase of attachments integral to the manure management system, such as blades, buckets, choppers, or spreaders, may be eligible at the time that an open feedlot is replaced with a dry bedded confinement building.

(1) An existing open feedlot operation is completely replaced by confinement feeding operation structures which store manure exclusively in dry form; or

(2) An existing animal feeding operation is expanded by the addition of confinement feeding operation structures which store manure exclusively in dry form, and manure controls meeting the requirements of 567—Chapter 65 are installed or documented for the existing animal feeding operation.

d. *Funding formula.* Loans for water quality projects for facilities being expanded by an increase in the animal unit capacity shall be funded according to the following formula:

Existing animal unit capacity/new animal unit capacity × total eligible project cost × 1.5 = maximum linked deposit amount

Example: 450 AUC / 900 AUC × \$500,000 × 1.5 = \$375,000

Example: 300 AUC / 600 AUC × \$300,000 × 1.5 = \$225,000

Example: 50 AUC / 900 AUC × \$500,000 × 1.5 = \$41,666

If existing areas in open feedlots are kept open where some pens are replaced and the operation is expanded through the addition of a dry bedded confinement feeding operation building, the remaining open lot areas must comply with 567—65.101(459A).

93.5(2) *Applying for assistance.* Application for project approval shall be made on forms provided by the department or its agent. Forms may also be downloaded from www.iowasrf.com.

93.5(3) *State Project review and approval.* ~~Prior to receiving assistance, a livestock producer the applicant shall submit to the department a description of facilities, equipment or preparation or updating of manure management, nutrient management or comprehensive nutrient management plans to be financed and documentation of project approval as determined by the department and detailed on the project application an application to the local soil and water conservation district. The district will evaluate the application, provide an estimated cost, and certify that the practice is eligible and compatible with state water quality goals. All practices must comply with 567—Chapter 65 and shall be constructed to applicable USDA Natural Resource Conservation Service (NRCS) standards. NRCS staff or another technical service provider shall attest that the practice will be constructed to these specifications and standards.~~

93.5(4) *Duration of the project.* The project is to be maintained, kept in place or operated as proposed for the life of the loan. If an open lot is closed and replaced with an eligible replacement facility, the department or department's agent shall place a restrictive covenant that prohibits the operation of an open feedlot at the site being replaced for the life of the loan. The site or portion of the site that may not house animals shall be defined by the local soil and water conservation district.

93.5(5) *Manure management plan required.* The livestock producer shall have a manure management plan that fits the requirements of 567—65.17(459), a nutrient management plan as defined in 567—65.112(459A), or a comprehensive nutrient management plan as defined by the USDA Natural Resources Conservation Service NRCS to be eligible for the loan or, as part of the loan, develop a manure management plan, nutrient management plan, or comprehensive nutrient management plan.

a. Costs for development of a manure management plan, nutrient management plan, or comprehensive nutrient management plan are eligible costs.

b. Costs for updating a manure management plan, nutrient management plan, or comprehensive nutrient management plan are eligible costs if required for the implementation of a water quality project financed through the livestock water quality facilities program.

93.5(6) *Eligible costs.* ~~All costs directly related to the design, permitting, construction and financing of the water pollution control facilities are eligible costs. Costs for development of a manure management plan, nutrient management plan or comprehensive nutrient management plan are eligible costs. Costs for updating a manure management plan, nutrient management plan, or comprehensive nutrient management plan are eligible costs if required for the implementation of a water quality project financed through the livestock water quality facilities program.~~

93.5(7) ~~**93.5(6)**~~ *Ineligible costs.* ~~Costs for development of a new animal feeding operations are not eligible costs AFO as defined in 567—90.2(455B) are ineligible. Other ineligible costs include but are not limited to: Costs costs for water pollution control facilities, including design, permitting, construction or financing, that allow for the animal feeding operation to expand and become a concentrated animal feeding operation are not eligible costs. Costs; costs for the purchase of land to be used for application of wastewater or manure are not eligible costs; costs for operation and maintenance are not eligible costs. Refinancing; and costs for refinancing of water pollution control facilities constructed prior to the implementation of this program is not an eligible cost approval by the department or the department's agent.~~

93.5(8) **93.5(7)** *Recipient record keeping.* The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

~~93.5(9)~~ **93.5(8)** *Site access.* The livestock producer shall agree to provide the department and the department's agent access to the construction site to verify that the loan was used for the purpose intended and that the construction work meets the applicable state and federal requirements for animal feeding operations. The livestock producer also shall agree to provide the department and the department's agent periodic access to the animal feeding operation, pursuant to biosecurity requirements in 567—paragraph 65.113(9)“b,” for the duration of the loan to ensure that the constructed facility is being operated and maintained as designed.

~~93.5(10)~~ *Interest rate and fees.* The loan interest rate and loan fees shall be established annually in the clean water state revolving fund intended use plan. The loan interest rate is not to exceed the prevalent interest rate. The establishment of loan fees will take into account the administration cost of the livestock water quality facilities set aside.

ITEM 25. Amend paragraphs **93.6(1)“a”** to **“d”** as follows:

~~a.~~ *Location preferences.* Local water protection projects to be carried out in watersheds with Section 303(d) waters, waters determined to be impaired in the Section 305(b) report, or watersheds with approved management plans or total maximum daily load implementation plans are to be given a higher priority for funding. See 567—91.10(455B).

~~b. a.~~ *Eligible project costs.* The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the practices required to provide water quality improvements or protection as identified in an approved watershed management plan or in a total maximum daily load implementation plan prepared by the department.

~~e. b.~~ *Applicant eligibility.* Assistance is available to any person who owns or has legal control over land that needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other nonpoint source pollutants into waters of the state. Loans will be made only to persons who are owners of record or persons who have legal control of the property where the local water protection projects are to be installed. ~~Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.~~

~~NOTE: Current federal laws and rules as of February 2007 do not allow assistance for concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit or assistance for animal feeding operations that will become concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit as a result of the project.~~

~~d. c.~~ *Eligible practices.* The local water protection practices that are considered eligible include, but are not limited to, ~~composting facility,~~ contour buffer strips, diversion, fence, field border, field windbreak, filter strip strips (with trees, shrubs), filter (waste treatment), grade stabilization structure, grassed waterway, pasture and hayland planting, planned grazing system, pond, riparian forest and vegetative buffer buffers, sediment basin, terrace, underground outlet with secondary water quality treatment, waste management system, ~~waste storage facility, waste treatment lagoon,~~ water and sediment control basin, stream bank stabilization and resoration, and other practices that are shown to improve or protect water quality.

ITEM 26. Amend subrule 93.6(2) as follows:

93.6(2) *Applying for assistance.* Application for project approval shall be made on forms provided by the department or its agent. Forms may also be downloaded from www.iowasrf.com.

ITEM 27. Amend subrule 93.6(3) as follows:

93.6(3) *Local Project review and approval.* Prior to receiving assistance, the applicant shall submit an application to the local soil and water conservation district. The local soil and water conservation district will evaluate the application, provide an estimated cost, and certify that the practice is compatible with state water quality goals. All practices shall be constructed to meet NRCS standards and specifications. NRCS or another technical service provider shall attest that the practice will be constructed to these specifications and standards.

ITEM 28. Amend subrules 93.6(5) and 93.6(6) as follows:

93.6(5) Eligible costs. All costs directly related to the implementation of local water protection projects approved in the memorandum of project approval are eligible costs. ~~A local water protection project for an animal feeding operation for which the loan amount is \$50,000 or less is eligible for this set-aside on the condition that the applicant has a manure management plan approved by the department.~~

93.6(6) Ineligible costs. Costs Ineligible costs include costs for overbuilding a practice beyond what is required to maintain or improve water quality and costs for the purchase of land are not eligible costs.

ITEM 29. Amend subrules 93.7(1) to 93.7(3) as follows:

93.7(1) General nonpoint source assistance. Assistance under the CWSRF general nonpoint source (GNS) set-aside shall be in the form of low-interest loans made directly or by participating lending institutions through a linked deposit or participation arrangement with the CWSRF. The following eligibility conditions and restrictions for participation apply to such assistance.

a. ~~Location preferences.~~ General nonpoint source water pollution control projects will be rated according to rule ~~567—~~91.11(455B).

b. a. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities or practices required to provide water quality improvements, restoration or protection. Participation in nontraditional projects where the primary purpose is not water quality protection or improvement will be limited to the portion of the project that is directly related to water quality improvement, restoration or protection.

e. b. Applicant eligibility. Assistance is available to projects for which facilities are needed to protect, restore or improve water quality from nonpoint source pollution. Only applicants that are owners of record of the property or have long-term control of the property where the project is to be implemented are eligible. In applications where the water pollution control project is a plan or document that will direct water quality protection or improvement efforts, loans will be made to applicants that have the capacity and capability of implementing the plan and repaying the loan.

d. c. Project eligibility. Eligible ~~general nonpoint source~~ projects include, but are not limited to, ~~agricultural well sealing, urban sedimentation basins, construction of wetlands and riparian lands, restoration of habitat, stream bank restoration and stabilization, remediation of underground storage tanks, remediation of aboveground storage tanks, urban storm water runoff best management practices and management facilities, sediment traps, wetland flood prevention areas, water conservation and reuse, and development of environmental management systems practices to address nonpoint source pollution control needs associated with storm water treatment and green infrastructure, silviculture, groundwater protection, marinas, resource extraction, brownfield remediation, aboveground and underground storage tanks, sanitary landfills, hydromodification, and watershed planning.~~ Nontraditional nonpoint source projects that may have a water quality protection or improvement component include, but are not limited to, bird sanctuaries and wildlife enhancement projects, ~~brownfield remediation, environmental insurance for brownfield remediation, vegetative plants, street sweepers and leaf removal equipment, closure of municipal landfills, salt storage sheds, sediment removal and other lake resoration practices,~~ wetland mitigation bank and education programs.

93.7(2) Applying for assistance. Applications for storm water and green infrastructure projects shall be submitted to local soil and water conservation districts. ~~Applications for assistance from the GNS set-aside for other GNS projects shall be submitted to the department at Environmental Services State Revolving Fund, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street 401 SW 7th Street, Suite M, Des Moines, Iowa 50319-0034 50309.~~ Forms may also be downloaded from www.iowasrf.com. Application forms will be provided by the department. Applications shall include an explanation of how the water quality will be protected, improved or restored by the proposed project. Applications will be accepted on a continuous basis.

93.7(3) Rating and ranking Project approval. ~~Using information included in the application, the department will rate and rank the projects.~~ The department will identify the highest rated projects evaluate eligibility and project design and provide the applicant a memorandum of approval for the proposed water pollution control project. The department will earmark the set-aside funds for

the water pollution control projects to be funded. ~~These funds will be available for six months after the IUP is approved in order for the applicant to complete the loan.~~

ITEM 30. Amend ~~567~~—**Chapter 93**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 455B.291 to 455B.299, 466.8 and 466.9 and 2009 Iowa Acts, Senate File 432.